

REMARKS

Claims 16, 19, 20, 25 and 26 are pending in the application.

Restriction Requirement

The Office Action asserts that the application contains directed the following patentably distinct species:

One, or two or more medicinal ingredients selected from the group consisting of *Glycyrrhiza glabra* extract, *Coix lachryma-jobi* extract, blackcurrant fruit extract, *Inula britannica* extract, cranberry fruit extract, *Mucuna birdwoodiana* extract, cactus extract, *Momordica grosvenorii* extractm and astaxanthin and its derivatives.

The Office Action requires Applicants to elect under 35 U.S.C. 121 a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Currently, the Office Action indicates that claims 16, 19, 20, 25 and 26 are generic.

Election

In order to be responsive to the requirement for restriction, Applicants elect the species *Glycyrrhiza glabra* extract. Applicants submit that claims 16, 20, 25 and 26 are generic, and that claims 16, 20, 25 and 26 are readable on the elected species.

Traverse

Notwithstanding the election of species *Glycyrrhiza glabra* extract in order to be responsive to the Restriction Requirement, Applicants respectfully traverse the requirement for restriction.

Applicants note that this application is a national stage of PCT/JP2003/09651, and thereby under unity of invention practice the Examiner must establish that the claims lack unity of invention under PCT Rule 13.1 and 37 C.F.R. 1.475.

In particular, the Examiner is reminded that in determining unity of invention, the criteria set forth in 37 C.F.R. 1.475 must be considered. Specifically, Applicants note that 37 C.F.R. 1.475 provides:

Unity of invention before the International Searching Authority, the International Preliminary Examining Authority, and during the national stage.

(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

(b) An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

(c) If an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.

(d) If multiple products, processes of manufacture, or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the main invention in the claims, see PCT Article 17(3)(a) and § 1.476(c).

(e) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.

Thus, in stating the restriction requirement, the requirement must state why unity of invention is lacking unity under PCT rules, including 37 C.F.R. 1.475. In contrast, the requirement is improperly silent with respect to any supporting basis in the PCT rules. Therefore, the restriction requirement is improper for not discussing the PCT rules, including the various sections of 1.475, and applying these rules to the pending claims.

Therefore, the restriction requirement is not proper, and should be withdrawn.

In view of the foregoing, it is respectfully requested that the Examiner reconsider the requirement for restriction, and withdraw the same so as to give an examination on the merits on all of the claims pending in this application.

CONCLUSION

For the reasons discussed above, it is respectfully submitted that the Examiner's requirement for restriction is improper and should be withdrawn.

Withdrawal of the requirement for the restriction with the examination of all claims pending in this application is respectfully requested.

Favorable consideration with early allowance of the pending claims is most earnestly requested.

If the Examiner has any questions, or wishes to discuss this matter, please call the undersigned at the telephone number indicated below.

Respectfully submitted,
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